IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER E.S.I. ACT NO.10/2006

Mr Employees State Insurance Corporation
Regional Office, Goa, through its
Regional Director, 46, Defence Colony,
Alto Porvorim, Bardez, Goa. ..... Appellant

V/s

M/s Kadamba Transport Corporation,
a Public Limited Company,
registered under the Companies At, 1956,
having its Office at East Wing,
Bus Terminus, Panaji, Goa
through its Managing Director,
Brig Ian da Costa (Retd). ..... Respondent.

Mrs. A. A. Agni and Mrs. N. Narvenkar, Advocates for the appellant.

Mr. A. R. Kankat, Advocate for the respondent.

CORAM : P. V. KAKADE, J.

DATE : 5TH DECEMBER, 2006.

ORAL JUDGMENT :

Heard learned Counsel for both the parties. In view of the facts and circumstances, Rule. Rule is made returnable forthwith.

2. This is an appeal preferred by the Employees State Insurance

Corporation against the order passed by the Presiding Officer, E.S.I.C., Panaji allowing the respondent's application, challenging the Order dated 6.12.95 whereby the Corporation had directed the applicant-respondent to pay damages to the tune of Rs. 1,08,586/- in terms of Section 85 of the Act.

3. The respondent-applicant is a public limited company engaged in transport service to the public by plying state carriage within the State of Goa and to the neighbouring States. The applicant commenced its business in October, 1980 and its fleet strength crossed 20 in March, 1981. According to the applicant-respondent, it had made an application to the ESI Office at Bombay for allotment of a code number. However, no reply was received and as such, the Manager of the applicant-respondent had personally gone to the ESI Office at Bombay and he was handed over a letter allotting the code number. The applicant-respondent has stated that thereafter, it commenced deduction of the contribution from 11.3.1982 and this contribution was regularly deposited in the State Bank of India, under intimation to the ESI Office. It was the case made out on behalf of the applicant that vide assessment order dated 18.10.1983, the Corporation claimed from the applicant-respondent contribution to the tune of Rs.1,10,052-93 for the period from October, 1980 to March, 1982. The said

order under Section 45-B of the ESI Act was challenged by the applicant vide letter dated 2.11.1983. The ESI Court directed the respondent to correct the contributions payable taking into account the date of intimation of coverage. The Corporation, thereafter, determined the contribution at Rs.1,08,586.41 for the period from January, 1981 to March, 1982 and interest amounting to Rs.44,321.10 i.e. at the rate of 6 % for the period from 22.2.1982 to 19.10.1989 and Rs.4,712.55 i.e. at the rate of 12 % for the period from 20.10.1989 to 28.2.1990. A review application was filed before the ESI Court by the applicant, which was rejected on the ground that the ESI Court had no power to deal with the same. Therefore, the amount came to be deposited. Thereafter, the Corporation vide Notice dated 8.8.1990 informed the applicant-respondent that it proposed determining and recovering from the applicant-respondent damages under Section 85-B of the ESI Act for not effecting the payment of the contribution within the stipulated time and, accordingly, made demand thereof and subsequently, passed the order dated dated 6.12.1995 under Section 85-B of the said Act. This order came to be challenged before the ESI Court wherein the Corporation took up a stand that the ESI Court had directed the applicant-respondent to pay the contribution along with interest within a period of 15 days from the date of issue of the order dated 22.2.1990. It was stated that the applicant had paid the said amount

on 26.7.1990 and had not paid the contributions for the period from January, 1981 to March, 1982 and hence, the action that was sought to be taken by the Corporation was tried to be justified.

4. The ESI Court, after hearing both the parties, came to the conclusion that the applicant had proved that the impugned order dated 6.12.1995 was illegal, null and void. It was also held that the respondent-appellant was not liable for recovery of the damages under Section 85-B of the said Act and, as such, the application came to be allowed. Hence, the present appeal by the Corporation.

5. At the outset, it may be noted that two substantial questions of law are sought to be raised on behalf of the appellant-Corporation, the first one is to the effect that whether liability to pay contributions under the Employees State Insurance Act is automatic the moment the number of the employees reaches the slab as provided in the Act/Notification issued under the Act and the allotment of the code number to the establishment is only as a matter of fallout of the applicability of the Act. The second question being whether failure to give any explanation whatsoever for the delay for the period from 1982-1985 is a factor relevant to impose damages under Section 85-B and the E.I. Court has misread and misapplied the ratio

in the case of Prestolite and Samrat.

6. It may also be noted that so far as issue of limitation is concerned, admittedly, there is no limitation provided. The E.I. Court has referred to the case of ***Samrat Industries vs. Regional Director ESIC***, 1995(1) LLJ 171 wherein it is held that there is no limitation provided, and this law is fairly settled that the power is conferred to effectuate a purpose and it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time is an aspect which has to be decided on the facts and circumstances particular to each case. In the present case, the ESI Court had come to the conclusion that in view of the facts and circumstances, the cause was not barred by law of limitation as it was within reasonable time. Taking into consideration the reasoning adopted by the lower Court, I do not find any reason to interfere with this finding, especially when a speaking order in that regard is passed.

7. Similarly, regarding first question of law which is raised, there cannot be two opinions that the liability to pay the contributions arises the moment the number of employees reaches the slab as provided under the Act. However, the question involved in this matter is whether, under the

circumstances, damages as contemplated under Section 85-B of the Act are payable. The lower Court has observed that the record indicated that the applicant had challenged the order passed under Section 45-B of the ESI Act and the said dispute was decided by the Court in the year 1990 and the review application filed by the applicant was also decided on 20.7.1990 and the applicant deposited the contributions on 26.7.1990. This fact was brought to the notice of the Court vide letter dated 10.9.1990 exhibit 13. However, it is apparent from the record that the Corporation did not take into account the said explanation but, in fact, it was wrongly held that the applicant had not made any written representation and had mechanically passed the order on such erroneous presumption.

8. The learned Counsel for the appellant vehemently urged that if there were any mitigating circumstances involved in this case, then the proper course would have been to remand the matter. However, in view of the facts and circumstances, I do not see any reason why the matter should be remanded. In view of the ratio laid down by the Supreme Court in ***Prestolite of India Ltd., vs. Regional Director ESIC.***, AIR 1994 SC 521, I hold that the said ratio would not be strictly applicable to the present case in the sense that no remand would serve any purpose and the order passed

by the lower Court does not suffer from any infirmity and/or illegality.

9. In view of this position, no interference is called for in the impugned order and as such, the appeal stands dismissed with no order as to costs. Rule is discharged.

P.V. KAKADE, J.

ssm.